

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JESSICA S.,

Plaintiff,

-v-

5:23-CV-370

COMMISSIONER OF
SOCIAL SECURITY,

Defendant.

APPEARANCES:

LAW OFFICES OF
KENNETH HILLER, PLLC
Attorneys for Plaintiff
6000 North Bailey Avenue, Suite 1A
Amherst, NY 14226

SOCIAL SECURITY
ADMINISTRATION
Attorneys for Defendant
6401 Security Boulevard
Baltimore, MD 21235

DAVID N. HURD
United States District Judge

OF COUNSEL:

JUSTIN M. GOLDSTEIN, ESQ.

KATHRYN S. POLLACK, ESQ.
Special Ass't U.S. Attorney

ORDER ON REPORT & RECOMMENDATION

On March 23, 2023, plaintiff Jessica S.¹ (“plaintiff”) filed this civil action seeking review of the final decision of defendant Commissioner of Social Security (“Commissioner”) denying her application for Supplemental Security Income (“SSI”) under the Social Security Act (the “Act”). Dkt. No. 1. Along with her complaint, plaintiff also sought leave to proceed *in forma pauperis* (“IFP Application”). Dkt. No. 3.

The case was initially assigned to U.S. Magistrate Judge Andrew T. Baxter. But because plaintiff did not consent to the exercise of a Magistrate Judge’s jurisdiction, Dkt. No. 5, the matter was reassigned to Senior U.S. District Judge Gary L. Sharpe and then referred to Judge Baxter for a Report & Recommendation (“R&R”), Dkt. No. 6.

Thereafter, Judge Baxter granted plaintiff’s IFP Application, Dkt. No. 7, the Commissioner filed a certified copy of the Administrative Record, Dkt. No. 9, and the parties briefed the matter in accordance with General Order 18, which provides that an appeal taken from the Commissioner’s denial of benefits is treated as if the parties have filed cross-motions for a judgment on the pleadings, Dkt. Nos. 10, 16, 17. The case was later reassigned to U.S.

¹ In accordance with a May 1, 2018 memorandum issued by the Judicial Conference’s Committee on Court Administration and Case Management and adopted as local practice in this District, only the first name and last initial of plaintiff will be mentioned in this opinion.

Magistrate Judge Mitchell J. Katz, Dkt. No. 18, and eventually to this Court for final review, Dkt. No. 19.

On April 19, 2024, Judge Katz advised by R&R that plaintiff's motion be granted, the Commissioner's motion be denied, and that the Commissioner's final decision be reversed and remanded for additional administrative proceedings pursuant to sentence four of 42 U.S.C. § 405(g). Dkt. No. 20.

Neither party has filed objections. Although the Commissioner sought and received an extension of time in which to do so, Dkt. No. 22, that time period has now expired, *see id.*

Upon review for clear error, the R&R is accepted and will be adopted. *See* FED. R. CIV. P. 72(b).

Therefore, it is

ORDERED that

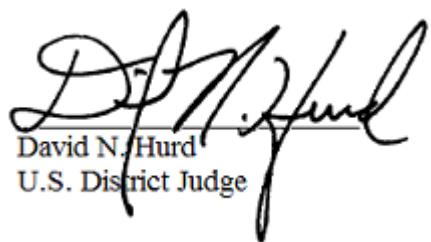
1. The Report & Recommendation is ACCEPTED;
2. Plaintiff's motion is GRANTED;
3. The Commissioner's motion is DENIED;
4. The Commissioner's final decision is VACATED; and
5. This action is REMANDED for further proceedings consistent with this

Order and Judge Katz's R&R pursuant to sentence four of § 405(g).

The Clerk of the Court is directed to terminate the pending motion, enter a judgment accordingly, and close the file.

IT IS SO ORDERED.

Dated: May 21, 2024
Utica, New York.



David N. Hurd
U.S. District Judge